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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 28 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Bell Atlantic Petition for Reconsideration	)	CC Docket No. 97-149
of the 1997 Annual Access Tariff Filings	)	

BELL ATLANTIC[1] REPLY

In its Petition For Reconsideration, Bell Atlantic established that the refund to long distance carriers ordered in the 1997 tariff proceeding left the former NYNEX companies without an opportunity to recover admittedly legitimate costs from other customers that the Commission concluded should have paid them. Moreover, the Commission based its decision to require a refund in the first place on its own common line cost projection model, which produces results that are inferior to the method relied upon by NYNEX in its tariff filing. Finally, the Commission justified prescribing a new method to calculate these costs based on a flawed statistical analysis that, when corrected, supports a conclusion that NYNEX's cost calculations were reasonable as originally filed. For any and all of these reasons, the Commission should reconsider its decision here.

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[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company. The first seven listed carriers operate subject to the interstate tariff Bell Atlantic FCC No. 1. The other two carriers, the former NYNEX companies, operate subject to the interstate tariff NYNEX FCC No. 1.

I. The Autoregression Model Adopted By The FCC For The First Time Here Is Less Accurate Than The Method Used By The Former NYNEX Companies To Allocate Costs

As an initial matter, no party here disputed that the autoregression model, adopted by the Commission as its preferred method to calculate base factor portion ("BFP") costs, is flawed and is actually less accurate than the method used by the former NYNEX companies.[2] Nor could they. As Bell Atlantic demonstrated, when run for prior years, the ***average*** error by the FCC model was larger than ***any*** of the errors made by NYNEX. Bell Atlantic Petition For Reconsideration at 11. In addition, the autoregression model includes an implicit ***demand*** projection that replaces the highly accurate method used by NYNEX to calculate demand, despite the fact that NYNEX's demand projection was never even challenged. On this basis alone, the Commission should reconsider its order.

II. The Projections Relied Upon By The Former NYNEX Companies Were Reasonable

Likewise, no party here provided a substantive response to Bell Atlantic's showing that the Commission incorrectly applied the statistical tests that it relied upon to support its conclusion that the NYNEX calculations were unreasonable. In fact, the only party to challenge Bell Atlantic's analysis was MCI, but even MCI provided no substantive support for the Commission's application of the statistical tests.

For example, with respect to the so-called "sign" test relied on by the Commission – a test that produced no statistically significant result (***see*** Bell Atlantic Petition For

[2] Indeed, in its comments, U.S. West echoed Bell Atlantic's conclusions when it compared the mandated methodology with its own projections. U.S. West Comments at 3.

Reconsideration at 8-9) -- MCI merely argues that the test "was only one of several tests employed by the Commission." MCI Comments at 11. In fact, the error that was made here invalidates ***all*** of the Commission's analysis because the Commission relied on its erroneous conclusions from the sign test to structure its other statistical test – the so-called "difference in the means" test. It structured that second test based on an assumption that local carriers would bias their cost estimates downward, rather than structure the test as an unbiased inquiry into whether the local carriers' cost projections were too low ***or*** too high.[3] But the only basis for that assumption was the invalid conclusions drawn from the sign test.[4]

MCI argues that the one-sided inquiry used by the Commission in its second test was consistent with the inquiry before the Commission. But the Commission's own investigation order made clear that the full inquiry was to explain "any pattern of significant and consistent over- or under-estimation of [local carrier] BFP revenue requirements."[5] Because it ignored the possibility of over-estimation of BFP costs, the actual test used by the Commission was inconsistent with the scope of its own inquiry, and as a result, it produced invalid results.

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[3] In statistical parlance, the Commission should have used a "two-tailed t test," rather than the "one-tailed t test" it used in the order.

[4] While not a part of its statistical analysis, the Commission assumed that the local carriers had a financial incentive to underestimate costs. As Bell Atlantic demonstrated, this was not the case for NYNEX. Bell Atlantic Petition for Reconsideration at 5-7. U.S. West demonstrated that it also had no material incentive to underestimate costs. U.S. West Comments at 2-3.

[5] Memorandum Opinion and Order, CC Dkt. No. 97-149, ¶ 16 (rel. Dec. 1, 1997) ("1997 Access Order").

MCI also argues that in its second statistical test, the Commission used an acceptable confidence interval – the threshold used to determine whether the results of a test are statistically significant. The Commission had relied on a 90% confidence interval rather than the proper 95% or 99% intervals. MCI does not suggest that the 90% interval is routine, but only that it "is not used as rarely as Bell Atlantic claims."[6] MCI argues that the aberrational 90% interval is appropriate here because Bell Atlantic bears the burden of proof in a tariff investigation. But the burden of proof has nothing to do with setting the correct test for statistical significance. By that logic, the Commission could use a 50% interval and always "prove" noncompliance. The lower the confidence interval, the greater the chance that the analysis will result in a finding of statistical significance when none should exist.[7] That concern is especially important here, where -- when the Commission found fault with a carrier's projection -- it imposed its own projections (with their own potential for error) as a substitute. Before the Commission orders refunds based on the results of a statistical test with a limited sample, it must establish with a high degree of certainty that the results of that test are valid.

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6 MCI Comments at 11. MCI also cites (fn 33) a single instance of the Common Carrier Bureau using such an interval a decade ago for an entirely different purpose. This citation proves nothing about the underlying validity of such a test here, and indeed the Commission commonly uses a more appropriate interval (most recently, in presenting changes in statistics for residential phone penetration). ***See*** FCC Report "Telephone Subscribership in the United States" by Alexander Belinfante, Industry Analysis Division, Table 2 (rel. Jan. 1998). (Identifies changes as statistically significant at a 95% confidence level).

7 This is known as a "type I" error.

III. Requiring A Refund Of Carrier Common Line Rates Without Also Permitting Local Carriers To Recover Their Costs From Those Customers Who Should Have Paid Those Costs Was Unreasonable

The majority of the parties here, including both local exchange and long distance carriers, agree that the tariff order penalizes Bell Atlantic "for failing to use a methodology that did not even exist at the time the monies in question were being collected" and that, if not corrected, the order prevents Bell Atlantic "from recovering legitimately incurred costs." Sprint Comments at 1-2. As those commenters point out, equity considerations, which weigh strongly in favor of the Reconsideration Petition, include the fact that the local carriers do not receive a windfall for an understatement of the BFP; the Commission's new methodology is a change from prior practice relied on by the local carriers; and the lack of consumer benefit from these refunds (which have not been passed on to consumers). ***See*** U.S. West Comments at 6-7.

One solution, as advocated by Sprint, is to make an a prospective adjustment in end-user common line charges ("EUCLs") to offset the retroactive refund.[8] MCI and AT&T complain that such an offset is unlawful, but the cases they cite do not deal with the situation here, where the same projection that overstated one rate automatically understated another.[9]

More fundamentally, as both MCI and AT&T explicitly concede, if there is adequate notice, the Commission has authority to "true-up" rates in both directions. MCI

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[8] Indeed, SBC has made a tariff filing to effectuate just such a change.

[9] The only exception is their citation to the Bureau's resolution of the 1993-96 tariff investigation. But Bell Atlantic has applied for review of that decision with the Commission. Bell Atlantic Application for Review, 1993-96 Annual Access Tariff Filing, CC Dkt No. 93-193 (filed July 25, 1997).

Comments at 8; AT&T Comments at 8-9. Here, AT&T's own petition on the original tariffs made clear the scope of the potential change. AT&T argued then that local carriers had "understated their proposed EUCL revenues by $209 million, and, consequently, have also overstated the proposed CCL Rate Caps by $209 million."[10] This two-way impact was underscored by the Commission in its designation order. The Commission designated the issue "of whether the price cap LECs have justified" their "BFP revenue requirement and EUCL demand forecasts."[11] The issue was not the level of carrier common line charges, but the underlying BFP calculation. To make it even more clear, the Order explained that a "relatively lower projected per-line BFP revenue requirement generally will lead to a relatively lower MLB EUCL charge and an increase in the maximum CCL charge."[12] In other words, any change in the BFP would impact both carrier ***and*** end-user charges.

If the Commission elects not to allow an increase in end-user charges, it should withdraw the requirement for a refund to the carriers. MCI argues that the refund order is consistent with price cap rules. MCI Comments at 9. But no party, including MCI, suggests that Bell Atlantic's calculation of a price cap for its Common Line Basket is incorrect. This is not, as MCI suggests, a section 204 investigation that is independent of the price cap rules. The only purpose of the BFP calculation is to split the recovery of the Common Line Basket costs between carriers and end-users. There is no basis to look at

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[10] Petition of AT&T Corp. on Price Cap LEC Tariff Filings at 3 (filed June 23, 1997)

[11] Order Designating Issues For Investigation at ¶ 13 (rel. July 28, 1997) ("Investigation Order").

[12] ***Id.*** at ¶ 5.

the impact of that calculation on one set of rates in isolation without reference to the entire allowable price cap.

MCI also contends that Bell Atlantic is not being penalized because the Commission has not required that it use a new method of BFP forecasting. MCI wrongly claims that "[n]owhere in the order" does the Commission require that "LECs must forecast their rates using the autoregressive method." MCI Comments at 10. In fact, the Order is clear that the Commission elected to "prescribe forecasts of the per-line BFP revenue requirement" and that it would apply the "autoregressive method to develop the forecasts" upon which it based its prescription.[13] While it is not unreasonable for the Commission to require a new methodology for forecasting, it is arbitrary and capricious to order refunds based on local carriers' failure to match the results of that methodology for periods prior to its release.

IV. The Commission Should Reconsider Adjusting The Amortization of Equal Access Costs To Reflect Growth In Demand

SBC has filed a petition seeking reconsideration of the Commission's determination to augment the exogenous cost adjustment eliminating all equal access costs with an additional amount intended to represent demand growth (the so called "R" adjustment). None of the commenting parties can dispute SBC's fundamental point: the Commission's rules make no mention of an "R" adjustment, and there was no adjustment ordered in access reform – the rulemaking proceeding in which the Commission determined that the removal of equal access amortization should be treated as an exogenous cost reduction. The Commission cannot, consistent with the requirements of

[13] 1997 Access Order at ¶ 77.

the Administrative Procedures Act, add this new substantive requirement in the context of a tariff investigation, and its order should be reconsidered. ***See*** 5 U.S.C. § 556(d).

Conclusion

Based on the foregoing, and on Bell Atlantic's petition, the Commission should reconsider its order in this proceeding.

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January 28, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January, 1998, a copy of the foregoing "Bell Atlantic Reply" was served by first class U.S. mail, postage prepaid, on the parties listed on the attached service list.

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